

1 David M. Shaby II, Esq. (97871)
2 dshaby@shabyandassociates.com
3 R. Christopher Harshman, Esq. (248214)
4 charshman@shabyandassociates.com,
5 DAVID M. SHABY II & ASSOCIATES, APC
6 11949 Jefferson Boulevard, Suite 104
7 Culver City, California 90230
8 Telephone: (310) 827-7171
9 Facsimile: (310) 822-8529
10 Service address: docket@shabyandassociates.com

Attorneys for Torrance Airport Association

8 UNITED STATES DISTRICT COURT
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CENTRAL DISTRICT OF CALIFORNIA

Torrance Airport Association, Chapter of
California Pilots Association, a California
Nonprofit Public Benefit Corporation,

Petitioner/Plaintiff,

vs.

City of Torrance, a California municipal
corporation and ROES 1 through 10,

Respondent/Defendants.

Case no. CV 24-2692-JFW (MRWx)
Assigned to the Hon. John F. Walter
**VERIFIED AMENDED PETITION FOR WRITS
OF (1) ADMINISTRATIVE MANDAMUS (CAL.
CODE CIV. PROC. § 1094.5); (2)
TRADITIONAL MANDATE (CAL. CODE CIV.
PROC. § 1085); (3) OTHER
EXTRAORDINARY RELIEF; (4)
DECLARATORY RELIEF (28 U.S.C. §§ 2201-
2202); AND (5) INJUNCTIVE RELIEF**

Petitioner TORRANCE AIRPORT ASSOCIATION, CHAPTER OF
CALIFORNIA PILOTS ASSOCIATION (“TAA”), pursuant to Fed. R. Civ. P.
15(a)(1)(B), hereby brings the following Verified Petition for Writs of Administrative
Mandamus and Traditional Mandate (“Petition”) against Respondent CITY OF
TORRANCE (“City”), and ROES 1 through 10, and allege as follows:

PARTIES

1. TAA, a California Nonprofit Public Benefit Corporation, is now, and at all
relevant times mentioned herein, has been registered and approved to conduct business in
the State of California, County of Los Angeles with its principal address 2785 Pacific Coast
Highway #E164, Torrance, California 90505. TAA was initially formed in 1991 as

1 Torrance Airport Boosters Association with its Articles of Organization filed with the State
2 of California Secretary of State (“Secretary”) on February 8, 1991. One of its stated
3 purposes is the “[p]reservation and enhancement of Torrance Airport as a public use
4 facility.” On August 16, 1995, Torrance Airport Boosters Association filed with the
5 Secretary a Certificate of Amendment of Articles of Incorporation changing its name to
6 TAA.

7 2. City is now, and at all relevant times mentioned herein, a California
8 municipal corporation, a charter city, located in the County Los Angeles and the owner of
9 Torrance Municipal Airport.

10 3. Respondents ROES 1 through 10 inclusive, whether individual, corporate,
11 associate, or otherwise, are fictitious names of Respondents whose true names and
12 capacities are, at this time, unknown to Petitioner. Petitioner allege that at all times herein
13 mentioned, each of the Respondents sued herein as ROE was acting for himself/herself, or
14 itself as an agent, servant, and employee of his/her or its co-respondents, and in doing the
15 things hereinafter alleged, was acting within the scope of authority as that agent, servant
16 and employee and with the knowledge, permission and/or consent of his/her or its co-
17 respondents, and each of those factiously named respondents, whether acting for
18 himself/herself or itself or as an agent, corporation, association, or otherwise, is in some
19 way liable or responsible to Petitioner. At the time as Respondents’ true names become
20 known to them, Petitioner will seek leave to amend its Petition to insert those
21 Respondents’ true names. Reference herein to Respondents, without any other limitation,
22 shall include both the specifically named and fictitiously named Respondents.

23 **VENUE AND JURISDICTION**

24 4. This action was originally brought in the Superior Court of the State of
25 California for the County of Los Angeles (the “Los Angeles Superior Court”), and
26 removed by the City.

1 5. Venue was originally proper in the Los Angeles Superior Court per Code of
2 Civil Procedure section 395(a) as the acts and omissions complained of herein occurred,
3 and the property affected by those acts is located in Los Angeles County.

4 6. The Los Angeles Superior Court Court has subject matter jurisdiction over
5 this matter, pursuant to Code of Civil Procedure sections 1085 and 1094.5. TAA is an
6 aggrieved person, as a person who itself or through a representative, appeared at the public
7 hearings of the City Council and objected to the City's adoption of Ordinance No. 3927
8 ("Landing Fee Ordinance").

9 This Court has jurisdiction over this case as it involves federal questions. "The
10 district courts shall have original jurisdiction of all civil actions arising under the
11 Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. "[F]ederal
12 jurisdiction over a state law claim will lie if a federal issue is: (1) necessarily raised, (2)
13 actually disputed, (3) substantial, and (4) capable of resolution in federal court without
14 disrupting the federal-state balance approved by Congress." *Gunn v. Minton*, 568 U.S.
15 251, 258 (2013) (citing *Grable & Sons Metal Prod., Inc. v. Darue Eng'g & Mfg.*, 545 U.S.
16 308 (2005)). "Except as otherwise provided by Act of Congress, any civil action brought in
17 a State court of which the district courts of the United States have original jurisdiction, may
18 be removed by the defendant or the defendants, to the district court of the United States
19 for the district and division embracing the place where such action is pending." 28 U.S.C.
20 § 1441(a).

21 7. This Court would have had original subject matter jurisdiction over TAA's
22 claim pursuant to 28 U.S.C. § 1331 had TAA elected to file this action initially in federal
23 court, because of the pervasive federal regulation of aviation and the fact that if the City is
24 allowed to dictate aircraft operations and charge unreasonable fees in an exclusive scheme,
25 it will be in violation of law codified in the United States Code.

26 8. This Court has personal jurisdiction over each party in this action because
27 each of them is either organized under the laws of the State of California, incorporated in,
28

1 and/or qualified to conduct business, or conducting business, in the State of California and
2 the County of Los Angeles.

3 9. The real property which is the subject of this Petition is located at and
4 commonly known as Zamperini Field or Torrance Municipal Airport with the
5 International Civil Aviation Organization (“ICAO”) identifier of KTOA.

6 10. This action is commenced within the time limits imposed for this action
7 under Code of Civil Procedure sections 1085 and 1094.5. Further, TAA has exhausted all
8 available legal remedies prior to filing this Petition.

9 11. An ordinance is a legislative act that is reviewable by writ of mandate. (Yes in
10 My Back Yard. v. City of Culver City (2023) 96 Cal.App.5th 1103, 1112-13.)

11 12. In accordance with Code of Civil Procedure section 1094.6(c), TAA has
12 concurrently filed a request for City to prepare the administrative record.

13 **TORRANCE MUNICIPAL AIRPORT**

14 13. The City of Torrance owns and operates an airport, originally known as the
15 Lomita Flight Strip and now known formally as Zamperini Field, informally as the
16 Torrance Municipal Airport (the “Airport”).

17 14. The Airport as the Lomita Flight Strip was built by the Federal Works
18 Administrator under the Defense Highway Act of 1941, as California Project FS-5.

19 15. On March 5, 1948, the United States executed a Quitclaim Deed to City for
20 a portion of the Airport property. As part of this Quitclaim Deed, City was required to not
21 “limit its usefulness as an airport.”

22 16. TAA is informed and believes, based on its review of publicly recorded
23 documents and publicly available correspondence obtained via the Freedom of
24 Information Act, that on March 22, 1956, the United States and the City entered into a
25 deed conveying the “lands or interests in lands” upon which the Airport sits to the City, on
26 the condition that the City “will maintain the project constructed thereon,” i.e., as the
27 Federal Aviation Administration has interpreted (in, e.g. an April 7, 2004 letter from Mark
28 McClardy, Manager, Airports Division, FAA, “coordinated with the Airports Division and

1 the Office of the Regional counsel at the FAA Western-Pacific Region, and the Office of
2 Airports and the Office of the Chief Counsel at Headquarters"), that the City maintain the
3 Airport as an Airport. This deed was accepted by a resolution approved by the then
4 Mayor of the City on May 1, 1956.

5 **TAA'S OPERATIONS AT THE AIRPORT**

6 17. Over 25 years ago, TAA began operations in support of the Airport. At the
7 time of filing, TAA had 148 Airport user members, many of whom have aircraft that are
8 subject to the Landing Fee Ordinance.

9 **CITY'S ATTACK ON FLYING AIRCRAFT**

10 18. On October 25, 1977, under Subject 10, Airport Noise Ordinance, City
11 Council separately created, approved, and adopted Resolution No. 77-215, a Resolution
12 of the City Council of the City of Torrance Reaffirming a Previously Adopted Policy to
13 Institute a Program of Aircraft Noise Abatement and Directing the City Manager and
14 Other City Officials to Take Certain Steps to Implement Such Program. In the fifth
15 Whereas clause of Resolution No. 77-215, it states, “[T]he volume of flights emanating
16 from Torrance Municipal Airport will be controlled at a level compatible with community
17 tranquility....” Section 1 of Resolution No. 77-215 states, “That it hereby reaffirms the
18 noise abatement policies for the Torrance Municipal Airport which it has previously
19 adopted (supplementary to those polices which are the subject of the noise abatement
20 ordinance), to wit:” Section 1, Item 16 of Resolution No. 77-215 states, “That the number
21 of flight schools on the Airport be limited to six (the number of schools now operating).”
22 (“6-Flight School Limitation.”) Section 1, Item 21 of Resolution No. 77-215 states, “That
23 the City Manager seek alternative training fields for training flights, particularly touch and
24 go and stop and go operations.”

25 19. In November 1981, City published the Torrance Municipal Airport Aircraft
26 Noise Control and Land Use Compatibility Study (“ANCLUC Report”). On page 1-1 of
27 the ANCLUC Report, it states, “The long history of over 1000 flight operations per day at
28 Torrance Municipal Airport (TOA) has produced conflicts with surrounding residential

1 land uses that were sufficient to cause the City to initiate a comprehensive aircraft noise
2 abatement program.”

3 20. On December 14, 2021, City Council considered Agenda Item 9H,
4 Community Development - Award Consulting Services Agreement for Airport Noise
5 Monitoring System and Authorize an Additional Environmental Quality Officer.
6 Expenditure: \$627,078 (Non-General Fund). Numerous comments were made
7 complaining about flying aircraft from flight schools.

8 21. On March 29, 2022, City Council considered Agenda Item 9B, Community
9 Development - Accept and File Torrance Municipal Airport (Zamperini Field) Noise
10 Abatement Update. Expenditure: None. During consideration of this Agenda Item, City
11 Council listened to discussions on the Torrance Municipal Code Section 51.2.3(e)’s
12 prohibition on early left turns and the number of flights due to the flight schools at
13 Torrance Municipal Airport. Numerous comments were made complaining about aircraft
14 flying over homes and that something has to be done.

15 22. On November 8, 2022, City Council considered Agenda Item 9I, City
16 Attorney, Community Development, and General Services - Accept and File Torrance
17 Municipal Airport (Zamperini Field) Noise Abatement and Airport Operations Update
18 and Review and Provide Direction on Implementation of Landing Fees. Expenditure:
19 None. During consideration of Item 9I, numerous comments were made complaining
20 about flying aircraft. One commenter said, “The Walteria neighborhood has been
21 bombarded by south training pattern flights from flight schools....” “Torrance should not
22 allow any private flight school to use a public resource for its own benefit while
23 disrespecting the residents who live near that resource and help pay for it through their
24 taxes. The city should either permanently reduce the number of flight schools that can
25 operate out of Torrance Airport...” Another commentor said, “The city should address
26 this issue by incorporating the following enforcement strategies: [¶]...[¶] Restrict the
27 number of training flights, ensuring that they turn at the ocean when making their loops.
28 Currently there are 7 flight training schools at the Torrance Airport, which is too many for

1 a municipal airport surrounded by so many residential tracts. There are only two flight
2 training schools each at the Hawthorne and Santa Monica Airports.” Further, Ms. Ramirez
3 gave a staff presentation on Item 9I, in which she said the number of repetitive flights over
4 surrounding neighborhoods has increased, commenting: “An additional tool to curb the
5 number of repetitive flights would be the implementation of landing fees.” Council
6 member Lewis stated: “So I am in 110 percent in support of trying to figure out a viable
7 solution if that is landing fees or....” Council member Griffiths agreed: “Again, there are
8 fee for landing fees that should be a no-brainer.”

9 23. Now driven by the resident complaints and City Council’s hostility to flying
10 aircraft, City Council embarked on a campaign to severely limit aircraft flying overhead.
11 This hostility has come to a feverous pitch when City Council decided to take a number of
12 actions to curb flying aircraft under City Council Agenda Item 9A, Transportation
13 Committee - Accept and File April 12, 2023 Meeting Minutes and Provide Direction
14 Regarding Airport Landing Fees, Air Noise Mitigation Efforts, and Phase Out of Leaded
15 Gas. Expenditure: None on July 25, 2023. During the course of considering Agenda Item
16 9A, numerous comments were made about noise from flying aircraft. “It is not
17 uncommon to receive complaints of low-flying noisy aircraft west of Anza Avenue and
18 Pacific Coast Highway.” (Meeting time, 2:38:15.) “You know less people are going to want
19 to fly and quite honestly I think that’s really the end goal is to reduce the amount of traffic
20 over our skies.” (Id. 2:57:50.) “A lot of the email complaints that we get is are people that
21 are doing those constant circles over people’s houses.” (Id. 3:02:13.) “The loud noise and
22 frequency of planes is intolerable, I can no longer enjoy my home or yard without constant
23 revving of engines flying low overhead at time them plane going over every minute.” (Id.
24 3:44:15.) “It would eliminate a ton of noise over all of our HOA area when the pilots miss
25 that they kind of cut right over our neighborhood and that’s what we’re getting this really
26 low you know flying noise.” (Id. 4:12:41.) “Nonstop fly [ing] needs to stop.” (Id. 4:19:37.)
27 “Hopefully, we will be able to hear a little bit without a whole of airplane noise flying
28 overhead.” (Id. 8:05:48.) The reason for the landing fees and the action being considered

1 was to regulate and limit flying aircraft. “The Transportation Committee (Committee) met
2 on December 14, 2022 and April 12, 2023 to receive input and provide direction
3 regarding concerns about the Torrance Municipal Airport - Zamperini Field (Airport).
4 Items discussed were options for reduction of aircraft operations and noise[.]” And,
5 “Discussion from both Torrance residents and the aviation community was heard, each
6 with proposals and feedback as *how to best mitigate the noise and frequency of flights in*
7 *the areas surrounding the Airport.*” (Emph. added.) During public comment on Item 9A,
8 Jim Gates, an officer and member of TAA, Christy Haworth, Michael Calabrese, Lee
9 Unger, Anne Minder, Marilyn McPoland, Richard Smith, Richard Shaw, Marianne
10 Wightman, Eric Hansen, Ronald K. Williams, Oded Yossifor, Lon Sobel, Linda Abrams,
11 Walter Tondu, Venessa Gibson, Emilio H. Morales, Gorge Cohen, Scott Osborn, Betty
12 Taylor, Brandon Mercade, Stephen D. Nordel, Eric Roth, and others objected that
13 landing fees are the answer to reducing flying aircraft.

14 24. Also, during City Council’s consideration of Agenda Item 9A on July 23,
15 2023, Council member Mattucci stated, “On December 14, 2022, and April 12, 2023, the
16 Transportation Committee met to receive input and provide direction regarding concerns
17 about the Torrance Municipal Airport - Zamperini Field. Items to discuss were operation
18 for reduction of aircraft operations and noise, including the limitation and revision of
19 runways, enforcement of early left turn violations, and the commissioning of a noise study
20 to potentially expand the existing noise monitoring system. Additional topics includes the
21 implementation of landing fees and the development of a voluntary letter of agreement
22 between the Torrance based six fixed-wing flight operations and the City of Torrance.
23 Discussion from both Torrance residents and the aviation community was heard, each
24 with proposals and feedback as to how best mitigate the noise and frequency of flights in
25 the area surrounding the airport.” Council member Sheikh stated, “So even with the
26 landing fee, I mean, that’s a deterrent, but there is no promise that it would reduce the
27 noise level.” Council member Sheikh also asked a commenter whether landing fees would
28 reduce noise pollution, to which the commenter replied, “Yes, sir.” Council member

1 Mattucci further stated, “So on Item 209 A [sic], approve implementation of landing fees.
2 I’m a big supporter of landing fees.” He went on to say, “And quite honestly, I think that’s
3 the end goal, to reduce the amount of traffic over our skies.”

4 25. On July 25, 2023, during the proceedings on City Council Agenda Item 9A, a
5 motion was made and carried to impose landing fees.

6 26. On September 12, 2023, City Council considered Agenda Item 9F, City
7 Manager and City Attorney - Reconsideration of a Council Action Not to Ban Touch and
8 Goes at Torrance Municipal Airport - Zamperini Field. Expenditure: None. Numerous
9 comments were made complaining about flying aircraft.

10 27. On October 17, 2023, City Council considered Agenda Item 9G, City
11 Manager and City Attorney - City Council Consideration of a Ban on Touch and Goes at
12 Torrance Municipal Airport - Zamperini Field. Expenditure: None. Numerous
13 comments were made complaining about flying aircraft.

14 28. On November 14, 2023, City Council considered Agenda Item 10B; during
15 public comment, Kety Chu, Cheryl Carter, Aircraft Owners and Pilots Association, Frank
16 Vidjak, Laurice Churchill (also stated that landing fees are not needed to offset City’s
17 costs), Christy Carter, Christy Haworth, Taylor Brodsky, Michael Haworth, Amir
18 Fadlallah, Thomas W. LaGrelius, John Renquist, Jeff Wachner, Daniel Catugy, Dyan De
19 Vlede, and others all objected to the landing fees; yet, City Council still decided to approve
20 a contract for the logging and collection of landing fees.

21 29. On November 28, 2023, City Council conducted a public hearing and the
22 first reading of the Landing Fees Ordinance under Agenda Item 10B. Sean Flynn, Grace
23 Flynn, Ken Brummage, Bill Nelsen, Edward Hurst, Linda Howard, Chris Schane, Dyan
24 Van De Velde, Michael Cannata, Jim Gates, Eileen Bardolph, Michael Stauber, Jose
25 Alanjene Stohner, Zoltan Taguibao, Richard McKay, Richard Bohner, Chris Parker,
26 Gregory Robert, AOPA, Laurice Churchill, and others objected to the imposition to
27 landing fees. City Council nonetheless adopted the Landing Fees Ordinance.

1 30. On December 12, 2023, City Council conducted the second reading of the
2 Landing Fees Ordinance and adopted it as Ordinance No. 3927. This action amended
3 Torrance Municipal Code sections 51.2.30, “Definition of Revenue Operations” and
4 51.2.31, “Fee for Revenue Operations,” and repealed section 51.2.32, “Refusal for
5 Clearance.”

6 31. On February 1, 2024, the Landing Fee Ordinance went into effect.

7 **LANDING FEES ORDINANCE IS PREEMPTED BY FEDERAL LAW**

8 32. City regulation of flying aircraft is additionally preempted by federal law. As
9 an overarching matter, the regulation of aircraft flight rests solely with the Federal Aviation
10 Administration (“FAA”). Per Title 49 United States Code section 40103(a)(1), “The US
11 Government has exclusive sovereignty of airspace of the United States.” This means that
12 any attempt by City to regulate the airspace above Torrance Airport has been preempted.
13 This includes the regulation of flights.

14 33. The exclusive jurisdiction of the U.S. Government over airspace is
15 fundamental. It has long been “the intent of Congress that there should be uniform
16 national policy with respect to air safety” (*Int'l Aerobatics Club Chapter 1 v. City of Morris*,
17 76 F. Supp. 3d 767, 782 (N.D. Ill. 2014)), against the “obvious peril [of] uneven
18 enforcement of nationally applicable regulations throughout the national airspace.” *Id.* In
19 *City of Tipp City v. City of Dayton*, the court denied a motion to remand a case that
20 challenged airport noise. The court stated: “In light of the federal government’s extensive
21 control over aircraft noise regulation [...] the federal interest in this case is substantial. The
22 Court, therefore, concludes that a *prima facie* showing has been made that Plaintiffs’
23 nuisance claim, although stated in terms of state law, “arises under” federal law, and that
24 this Court has subject matter jurisdiction over same.” *Id.*, 204 F.R.D. 388, 396 (S.D. Ohio
25 2001).

26 34. Both in 2020 and 2022, the FAA repeatedly told City it cannot regulate flight;
27 only the FAA can. In a letter dated February 18, 2020, to the Torrance Airport
28 Association, the FAA stated, “Congress has long vested the FAA with authority to regulate

1 the areas of airspace use, management and efficiency; air traffic control; safety; navigational
2 facilities; and aircraft noise at its source.” In response to a question about Torrance
3 Municipal Code section 5.2.3(e), which prohibits aircraft from turning left until it has
4 reached the ocean or attained an altitude of fifteen hundred (1,500) feet, the FAA readily
5 struck it down explaining:

6 “Because the Torrance code provision applies to aircraft in flight, it is not
7 consistent with the Federal statutory and regulatory framework described
8 above. Enforcement of the provision would be at odds with various court
9 opinions. As noted, state and local governments lack the authority to regulate
10 airspace use, management and efficiency; air traffic control; and aircraft noise
11 at its source. Federal courts have found that a navigable airspace free from
12 inconsistent state and local restrictions is essential to the maintenance of a safe
13 and sound air transportation system.”

14 35. In response, by letter dated August 16, 2021, and then through its attorneys
15 on September 20, 2022, City asked the FAA if the early left turn prohibition was
16 grandfathered. The FAA said no. Specifically, weighing in on another attempt by the City
17 to regulate aircraft in flight¹, The FAA sent the City’s counsel a letter dated December 16,
18 2022 (the “FAA Letter”). In that FAA Letter, the FAA was unambiguous that federal law
19 does not permit the City to enact “restrictions directing how aircraft may operate in the
20 navigable airspace (expressly an FAA function beyond the authority of an airport
21 proprietor).” *Id.*, p. 2. The FAA, in this letter, quoted (*Id.*, pp. 2-3) the United States
22 Court of Appeals for the Second Circuit (*National Helicopter Corp. of America v. City of*
23 *New York* (2d Cir. 1998) 137 F.3d 81, 92):

24 This argument, as the trial court recognized, evidences a misunderstanding of
25 federal aviation law. Congress, the Supreme Court, and we have consistently
26 stated that the law controlling flight paths through navigable airspace is
27 completely preempted. *See, e.g., [British Airways] Concorde I*, 558 F.2d at 83
28 (“[L]egitimate concern for safe and efficient air transportation requires that
exclusive control of airspace management be concentrated at the national

¹ TMC § 51.2.3(e): “Aircraft taking off to the west shall not turn left until they have either reached the ocean or attained an altitude of fifteen hundred (1,500) feet.”

² *British Airways Bd. v. Port Authority of New York* (2d Cir. 1977) 558 F.2d 75, 83.

1 level.”); *City of Burbank*³, 411 U.S. at 626-27, 93 S.Ct. at 1856-57 (recognizing
2 the federal government's possession of exclusive national sovereignty in U.S.
3 airspace); 49 U.S.C. § 40103(a)(1) (stating that the federal government has
4 “exclusive sovereignty of airspace of the United States”). The proprietor
5 exception, allowing reasonable regulations to fix noise levels at and around an
6 airport at an acceptable amount, gives no authority to local officials to assign or
7 restrict routes. As a result, the City unlawfully intruded into a preempted area
8 when it curtailed routes for the flights of certain Heliport aircraft. This condition
9 was properly enjoined.

10 36. On April 12, 2023, the City’s Transportation Committee was presented with
11 options to provide direction on reducing allowable flights. One of those options was to
12 impose landing fees.

13 37. On information and belief, TAA thereon alleges that Ordinance No. 3927
14 was adopted for the improper purpose of regulating flying aircraft by reducing the number
15 of flights into the Airport by imposing a discouraging landing fee on aircraft. Regulating
16 flying aircraft is clearly preempted by federal law.

17 38. As of February 1, 2024, City is in the process of invoicing and collecting
18 landing fees.

19 39. As documented by the City’s own records, flight operations have been
20 severely impacted at the Airport, falling to approximately fifty percent (50%) of those seen
21 at the Airport during comparable time periods in 2023, before the landing fee ordinance
22 was implemented.

23 40. As of at least September 26, 2024⁴, the City has brought administrative
24 charges against at least one pilot accused of performing a now-prohibited “low approach”
25 operation, a wholly aeronautic activity fully within the purview of the FAA.

26 25 ³ *City of Burbank v. Lockheed Air Terminal Inc.* (1973) 411 U.S. 624, 626 [93 S.Ct. 1854,
27 1856, 36 L.Ed.2d 547]

28 28 ⁴ In response to correspondence from the undersigned, the City ultimately at the last
minute took the hearing on this violation off calendar and postponed it indefinitely, but
has not canceled the hearing nor dismissed the alleged violation.

41. Serious questions additionally exist concerning the City's administrative review process for these violations, even if they were not otherwise in conflict with federal law. The City's process (apparently; the statutes are confusingly drafted and contradictory) provides only for an appeal from the decision of the administrative hearing board to the City Council, whose decision "shall be immediately final and conclusive." Torrance Municipal Code § 11.54. This is in violation of the Separation of Powers requirements of the California State Constitution (Cal. Const. Art. III, § 3) and the United States Constitution (see, e.g., *Boumediene v. Bush*, 553 U.S. 723, 742 (2008); *Hamdan v. Rumsfeld*, 548 U.S. 557, 638 (2006) (Kennedy, J., concurring)).

**ADOPTION OF LANDING FEES ORDINANCE IS IN VIOLATION OF THE CITY'S
OBLIGATIONS UNDER FEDERAL LAW**

42. The City, in enacting the landing fees ordinance specifically drafted to carve out an exception for Robinson Helicopter Company, Incorporated, is in violation of the “exclusive rights” provision codified at 49 U.S.C. § 40103(e)⁵.

43. The Airport "an air navigation facility on which Government money has been expended."

44. The City of Torrance received federal airport funds (grants) on at least June 22, 1966, and FAA Order 5190.2R⁶ and the Airport's Federal Aviation Administration ("FAA") Form 5010 both identify it as being subject to the "statutory Exclusive Rights Prohibition," referring to Section 401030(e)⁷.

⁵ “A person does not have an exclusive right to use an air navigation facility on which Government money has been expended.”

⁶ Available at <https://www.faa.gov/documentLibrary/media/Order/5190.2R.pdf>

⁷ Although the City disputes that it continues to be obligated under this “exclusive rights” provision, the plain text of the statute makes clear that there is no expiration date; once federal money is spent on an airport, the airport remains obligated under section 40103(e). recently in an enforcement action brought by another Airport user before the FAA under 14 C.F.R. Part 16 (*Sling Flying Club LLC v. City of Torrance*, FAA Docket No. 16-23-20)⁷, on January 31, 2024, the City brought a motion to dismiss claiming it was not bound by any federal obligations in its operation of the Airport (49 U.S.C. § 40103(e) was specifically raised by the complainant in that action); the FAA did not rule on the

1 45. The exclusive rights provision is the oldest federal obligation affecting
2 federally funded airports ... The prohibition against exclusive rights [was] recodified at 49
3 United States Code (U.S.C.) 40103(e)) and applies to any airport upon which any federal
4 funds have been expended.” FAA Order 5190.6B⁸, Airport Compliance Manual, section
5 8.3(b).

6 46. The City, in the actions taken detailed herein, amended its Municipal Code
7 with a new Section 51.2.30⁹, which contains subpart (a): “A landing fee shall be charged to
8 any individual or entity landing an aircraft at Torrance Airport. Military, public safety, and
9 medical operations shall be exempt from landing fees. Landings on private helipads¹⁰ (as
10 used in this section, a private helipad is a helipad that has been authorized by the City of
11 Torrance and is operated and maintained by a leaseholder on their leasehold. A private
12 helipad is not operated or maintained by the City of Torrance nor supported by funds
13 from the City of Torrance) that are operated and maintained by a leaseholder pursuant to
14 a lease with the City of Torrance shall be exempt from landing fees.”

15 47. The last exemption is the City of Torrance’s way of exempting Robinson
16 Helicopter from paying landing fees that all other users of the airport must now pay, and
17 creating an “exclusive right to use an air navigation facility on which Government money
18 has been expended” in violation of 49 U.S.C. Section 40103(e).

19
20
21 motion, requiring the City to answer (14 C.F.R. § 16.26(b)(5)). (That case has since settled
22 without an express determination regarding the Airport’s status as a facility bound by
23 Section 40103(e).)

24⁸

25 https://www.faa.gov/documentLibrary/media/Order/Order_5190.6B_Compliance_Chg3.pdf

26⁹ Available at

27 <https://www.codepublishing.com/CA/Torrance/#!Torrance05/Torrance0501.html#51.2.31>

28¹⁰ An interesting exclusion, as the City’s Municipal Code forbids such operations: “All take
offs and landings of aircraft shall be made on the runway only.” Torrance Municipal Code
§ 51.2.3(c).

1 48. The City of Torrance staff reports leading up to this change make this clear.
2 The City's Staff Report linked to from the agenda for the November 28, 2023 City
3 Council Meeting, where landing fees were discussed and the ordinance was first approved,
4 evidence that during the July 25, 2023 City Council meeting, the City Council requested
5 that certain restrictions and exemptions be placed on the applicability of landing fees as
6 outlined below:

7 (a) Landing fees would apply to transient aircraft; and,
8 (b) Landing fees would apply to flight schools with three or more aircraft
9 in their fleet; and
10 (c) An exemption would be granted for military, public safety, medical,
11 and *Torrance-based rotary wing aircraft manufacturers*.

12 49. The last provision is about Robinson Helicopter, which operates its factory at
13 the Airport. On page 2 of that report: "Currently, there is only one operator at Torrance
14 Airport that operates and maintains its own helipads. Robinson Helicopter maintains its
15 own helipads on its leasehold as part of its lease with the City of Torrance. A copy of the
16 current lease is attached as Attachment G. Since Robinson Helicopter is not using the
17 runways and public helipad for landings and is operating and maintaining its own helipads
18 through its leasehold with the City, Robinson Helicopter would be excluded from the
19 landing fees."

20 50. The City of Torrance itself identifies this as an exclusive right. Robinson
21 Helicopter gets excluded from paying landing fees while everyone else has must pay.

22 **ADOPTION OF LANDING FEES ORDINANCE WAS ARBITRARY AND CAPRICIOUS**

23 **AND NOT SUPPORTED BY SUBSTANTIAL EVIDENCE**

24 51. Ordinance No. 3927 is in the nature of a zoning ordinance because it
25 imposes a fee for landing an aircraft on City property (i.e., the Airport), which is a
26 restriction on the use of property.

27 52. For the first time, on November 28, 2023, City staff included in City Council
28 Agenda Item 10B an express finding claiming, "The landing fees, as adopted, are

1 necessary to offset the City's costs incurred in maintaining and operating the airport
2 facilities." However, no evidence was presented or expressed to support this finding.

3 53. The City's Charter, Article 15 - Airport Fund section 1500 requires that "all
4 fees, toll, rentals, charges, proceeds from the sale of property, and other revenues received
5 by the City from or in connection with the use or operation of any airport facilities owned,
6 controlled or operated by the City shall be placed in the said Airport Fund."

7 54. City Charter section 1501 requires, "Moneys in the Airport Fund shall be
8 used only for the following purposes and in the following order of priority, to wit: [¶] 1)
9 For the payment or providing for payment, including payments into any reserve or sinking
10 funds, as the same falls due, of the principal of and interest on any bonds of the City,
11 issued for the acquisition, construction, improvement or financing of airport facilities or
12 for additions, betterments, extensions or capital improvements thereto. [¶] 2) For the
13 current, necessary and reasonable costs and expenses to the City of operating and
14 maintaining airport facilities owned, controlled or operated by the City, but without
15 allowance for depreciation or obsolescence, or for additions, betterments, extensions or
16 capital improvements thereto. [¶] 3) After paying or providing for all payments under
17 subparagraph (1) above which are due or which will become due during the next ensuing
18 twelve (12) months' period, and after paying or providing for all current costs and
19 expenses under subparagraph (2) above, any balance which remains from time to time in
20 the Airport Fund and the several accounts therein may be used for the purpose of
21 acquiring, constructing, or improving airport facilities or for additions, betterments,
22 extensions or capital improvements thereto (including deposits in reserve or depreciation
23 reserves or accounts established for that purpose), and any part of such balance not then
24 needed for such purposes may be used for any lawful purpose."

25 55. Annually, City diverts millions of dollars from the Airport Fund to the City's
26 General Fund.

27 56. On information and belief, TAA thereon alleges that the City's annual
28 diversion of moneys from the Airport Fund to the City's General Fund is approximately

1 10 million dollars per year and constitutes substantial evidence that City does not need
2 landing fees for the operation or maintenance of the Airport, but for the improper
3 purpose of regulating flying aircraft by financially discouraging flights to the Airport.

4 57. On November 28, 2023, during the first reading of the Landing Fees
5 Ordinance, Jim Gates and others provided testimony and evidence that City diverted \$10
6 million from the Airport Fund to the City's General Fund annually and thus, the landing
7 fees revenue is unnecessary.

8 58. Since City does not require revenue of landing fees to maintain or improve
9 the Airport, the adoption of Ordinance No. 3927 is in excess of the City's police power.
10 City cannot arbitrarily or capriciously enact unneeded landing fees under its police power.

11 59. As a result, the City's adoption and imposition of landing fees per Ordinance
12 No. 3927 was, and is, arbitrary and capricious because there is no evidence to support
13 City's express finding of economic need.

14 **THE CITY'S UNREASONABLE LANDING FEES ARE IN VIOLATION OF FEDERAL**
15 **LAW**

16 60. The City's arbitrary and capricious landing fees are additionally a violation of
17 49 U.S.C. § 40116(e)(2)¹¹.

18 **ORDINANCE NO. 3927 IS AN INVALID SPECIAL TAX THAT HAS NOT BEEN**
19 **VOTER APPROVED**

20 61. Per Government Code section 50076, landing fees at the Airport is a special
21 tax subject to the two-thirds vote requirement of section 4 article 13A of the California
22 Constitution.

23 62. On information and belief, TAA thereon alleges that the landing fees of
24 Ordinance No. 3927 exceeds the reasonable cost of providing the service or the regulatory
25 activity for which it is charged.

26
27 ¹¹ The City may only "levy or collect ... **reasonable** ... landing fees, and other service
28 charges from aircraft operators for using" the facilities of the Airport. (Emphasis added.)

63. City failed to provide substantial evidence that the landing fees of Ordinance No. 3927 is a reasonable cost of providing the service or the regulatory activity for which it is charged.

64. On information and belief, TAA thereon alleges that Ordinance No. 3927 is also an unreasonable, unconstitutional special tax subject to the two-thirds vote requirement of section 4 article 13A of the California Constitution.

65. City did not conduct an election to obtain voter approval to impose the landing fees of Ordinance No. 3927. Thus, Ordinance No. 3927 is invalid.

FIRST CAUSE OF ACTION

*(WRIT OF ADMINISTRATIVE MANDAMUS PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 1094.5 TO
COMMAND CITY TO VACATE ORDINANCE NO. 3927 AND RETURN ALL COLLECTED LANDING FEES.)
[AS AGAINST CITY AND ROES 1 THROUGH 10]*

66. TAA realleges and incorporates by reference each paragraph above and below, as though fully set forth herein.

67. TAA has a beneficial interest in the outcome of the proceedings because its members are subject to the imposition of landing fees.

68. TAA's members, as represented by TAA, has a clear, present, and legal right to not pay landing fees for the improper purpose of regulating and limiting flying aircraft and paying fees that are not necessary for the operation of the Airport.

69. TAA has exhausted all available administrative remedies required to be pursued by it.

70. TAA lacks any plain, speedy, and adequate legal remedy to challenge City's decision to adopt and impose landing fees at the Airport because no provision of Torrance Municipal Code, statute or common law provides a legal cause of action to challenge Ordinance No. 3927.

71. Without substantial evidence of economic need, City's adoption of Ordinance No. 3927 was arbitrary and capricious.

72. City violated section 4 article 13A of the California Constitution by failing to submit Ordinance No. 3927 to the voters as a special tax.

73. TAA seeks this Court's Judgment and issuance of a peremptory writ ordering City to vacate and repeal Ordinance No. 3927 and refund all collected landing fees.

SECOND CAUSE OF ACTION

*(WRIT OF TRADITIONAL MANDATE PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 1085 TO
COMPEL CITY TO VACATE ORDINANCE NO. 3927.)
[AS AGAINST CITY AND ROES 1 THROUGH 10]*

74. TAA realleges and incorporates by reference each paragraph above and below, as though fully set forth herein.

75. TAA has a beneficial interest in the outcome of the proceedings because its members are subject to the imposition of landings fees.

76. City arbitrarily and capriciously adopted Ordinance No. 3927, and thus, the Landing Fees Ordinance is invalid.

77. TAA has exhausted all available administrative remedies required to be pursued by it.

78. TAA lacks any plain, speedy, and adequate legal remedy to challenge City and ROES 1 through 10's decisions to impose landing fees.

79. Without substantial evidence of economic need, City's adoption of Ordinance No. 3927 was arbitrary and capricious.

80. City violated section 4 article 13A of the California Constitution by failing to submit Ordinance No. 3927 to the voters as a special tax.

81. TAA seeks this Court's Judgment and issuance of a peremptory writ ordering City to vacate and repeal Ordinance No. 3927 and refund all collected landing fees.

PRAYER FOR RELIEF

WHEREFORE, TAA respectfully prays for judgment against Respondents, and each of them, as follows:

1. For a writ of administrative mandamus pursuant to Code of Civil Procedure section 1094.5 commanding City and ROES 1 through 10 to vacate and repeal Ordinance No. 3927 and refund all collected landing fees.

2. For a writ of traditional mandate pursuant to Code of Civil Procedure section 1085 commanding City and ROES 1 through 10 to vacate and repeal Ordinance No. 3927 and refund all collected landing fees.

3. For a permanent injunction barring the City's illegal attempt to govern aircraft in flight by prohibiting low approach and touch-and-go operations at the Airport, in violation of 49 U.S.C. § 40103(a)(1).

4. For a permanent injunction barring the City's illegal attempt to collect unreasonable and exclusionary landing fees, in violation of 49 U.S.C. 40103(e).

5. For a declaration of the obligations of the City under federal law.

6. For Petitioner's costs of suit.

7. For attorneys' fees pursuant to Code of Civil Procedure sections 1021.5 and 1032 and/or other applicable law.

8. For such other and future relief as the Court deems just and proper. 2

Respectfully submitted,

DAVID M. SHABY II & ASSOCIATES

Date: December 4, 2024

By:

R. Christopher Harshman, Esq.

Attorneys for Torrance Airport Association

VERIFICATION

I, the undersigned, declare: All facts alleged in the above document are true of my own personal knowledge. I have read the above Petition for Writ of Administrative Mandate and Traditional Mandate and know its contents. All facts alleged in the Petition are true of my own personal knowledge. I declare

1 under penalty of perjury that the foregoing is true and correct and that this declaration was executed on
2 December 3, 2024 at Torrance, California.

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Peter Broen, President